IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 668 OF 2007

RAJKUMAR KISHANLAL AWASTHI .. PETITIONER

Versus

Mr. A. N. ROY
Commissioner of Police & Ors. .. RESPONDENTS

Smt. Anjali Iyer for petitioner

Mrs. U.V. Kejariwal, APP

CORAM:-SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.

DATED:-7/6/2007

P. C.

. The petitioner was detained under an order of detention dated 29/12/05 passed by the Commissioner of Police, Brihan Mumbai. That detention order was based on two cases and three incamera statements made by witnesses A,B & C . By order dated 30th May, 2006, the order of detention was set aside. The learned counsel for the petitioner at that stage argued that the petitioner had preferred an application before the learned Magistrate that he was falsely implicated and this aspect should be investigated into. On that application the learned Magistrate passed an order directing investigation.

It was argued that the said application and the said order was not taken into consideration by the detaining authority and hence the order of detention was vitiated. This court was impressed by this argument and the order of detention was set aside. It is pertinent to note that this court has not held that the incamera statements were not genuine. The judgment also does not indicate that it was argued before this Court that incamera statements were fabricated.

2. In this petition the petitioner has prayed;

a) That this Hon’ble Court may be pleased to issue appropriate order, direction and/or writ directing the respondents to forthwith withdraw the allegations / statements made by the Witnesses "A", "B" and "C" and recorded by the respondent No. 2;

. OR

b) That this Hon’ble Court may be pleased to direct the Central Bureau of Investigation to investigate the allegations made against the petitioner in three in camera statements of Witnesses "A", "B" and "C" framed by the respondents at the behest of

influential persons.

4. By the first prayer the petitioner is seeking order and direction to the respondents to withdraw the allegations made by witnesses A, B & C. Such prayer in the nature of things cannot be granted. Respondents cannot withdraw the allegations made by witnesses A, B & C.

5. By the second prayer the petitioner is seeking direction to the C.B.I. to investigate into the allegations made by the witnesses A,B & C. The learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in **State of Haryana v. Bhajan Lal, 1992 SCC (Cri.) 426** and a judgment of this court in **Dnyandeo Krishna Choudhary & Anr. v. The State of Maharashtra & Ors, 1999 All MR (Cri.) 284** and contended that if the statements made by the witnesses disclose cognizable offence, it was obligatory on the police to record F.I.R. and conduct investigation. She submitted that the alleged statements have an adverse impact on the petitioner’s character and, therefore, a direction may be issued to the police to register F.I.R. and investigate the offence. The petitioner must get a

chance to prove his innocence. We are not impressed by this submission.

6. Incamera statements are recorded because the witnesses are not willing to disclose their identity out of fear of reprisal at the hands of the person against whom the statements are made. These statements are recorded after giving assurance to the witnesses that their names and identity will not be disclosed. It is, therefore, not possible to give any direction to the police to register FIR and investigate into those cases.

7. In this connection we may refer to the judgment of this court in **Sachin Nikam v. Commissioner of Police & Ors., 2005 All MR (Cri.) 1684** wherein somewhat similar contention was raised. This court referred to the judgment of the Supreme Court in **Bhajan Lal's** case and also the judgments of the Supreme Court where the Supreme Court has upheld the orders of detention issued on the basis of incamera statements and rejected the said submission. If the witnesses are not willing to come forward to prosecute the cases, the police cannot force them to do so. Statements of such witnesses are recorded on the condition of

anonymity. If the police register cases that would lead to disclosing identity of the witnesses. That will also frustrate the purpose of incamera statements. This submission of Ms. Aiyer must, therefore, be rejected.

8. We have been taken through the judgment of the Kerala High Court in **Mani v. State of Kerala, 1987 Cri. L.J. 1965**. In our judgment the said judgment is not applicable to the facts of the case because it does not pertain to incamera statements.

9. The petition is, therefore, rejected.

JUDGE.

JUDGE.